IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.538 OF 2007.

Along with

MISCE. CIVIL APPLICATION NO.862/2007
IN
W.P. NO. 538/2007.

1. Shri Naresh Krishna Gaunekar,
s/o Krishna Gaunekar, major,
married, residing at H.No.W10/30/20,
Ponda Town, Ponda Taluka, Goa.

2. Shri Durgadas Shamba Borkar,
s/o Shamba Borkar, major,married,
residing at H. No. 191/18,
Near I. D. Hospital, Tisk,Pona Town,
Ponda Taluka, Goa.

3. Shri Dilip Baburao Naik,
s/o Baburao Naik, major, married,
residing at H. No.159/A-6,Ponda Town,
Ponda Taluka,Goa

4. Shri Sharad Vaman Parsekar,
son of Vaman Parsekar,
major,married, businessman,
residing in HouseNo.211/3/2,
Opp. P.W.D. Complex,Tisk, Ponda
Town,Ponda Taluka, Goa. .. **Petitioners**

Versus

1. State of Goa,
through its Chief Secretary,
having its office at Secretariat,
Porvorim, Bardez- Goa.

2. The Director of Municipal Administrative, Government of Goa, having his office in the Collectorate complex,Panaji- Goa.

3. The Commissioner, the Goa, State Election Commission, 3rd Floor, Junta House, Panaji- Goa. .. **Respondents**

Mr. S. D. Lotlikar, Senior Advocate with Mr. Ryan Menezes, Advocate for the petitioners.

Mr. S.S.Kantak, Advocate General with Mrs. L. Dharwadkar, Addl. Govt Advocate for respondent NoS. 1 & 2.

Mr.V. P.Thali, Advocate for respondent no.3.

Mr. A.F. Diniz Advocate for the Goa State Commission For Backward Classes.

WITH

MISC. CIVIL APPLICATION NO.870/2007
IN
W.P. NO. 538/2007.

1. Shri Naresh Krishna Gaunekar & 3 Ors .. **Petitioners**

Versus

1. State of Goa & 2 Others, .. **Respondents**

And

Shri. Lavoo S.Mamladar, of major age, Indian National, resident of Durgabhat, Ponda-Goa. .. **Applicant/ Intervenor.**

Mr. M. S. Sonak, Advocate for the applicant/intervenor.

Mr. S. D. Lotlikar,Senior Advocate with Mr. Ryan Menezes, Advocate for the respondents/ Original petitioners.

Mr. S.S.Kantak, Advocate General with Mrs. L. Dharwadkar, Addl. Govt Advocate for the Original respondents No. 1 & 2.

Mr.V. P. Thali, Advocate for the Original respondent No.3.

WITH

MISCE. CIVIL APPLICATION NO.874/2007
IN
W.P. NO. 538/2007.

1. Shri Naresh Krishna Gaunekar & 3 Ors .. **Petitioners**

Versus

1. State of Goa & 2 Others, .. **Respondents**

And

Mrs. Radhika Shrikant Nayak,
wife of Shrikant Nayak,
48 years old, ex-Chairperson
of Ponda Municipal Council,
India national, residentof H.No.S-3,
Ramnathkar Apartments,
Old Bazar, Ponda- Goa. .. **Applicant/ Intervenor.**

Mr. S. G. Dessai, Senior Advocate with Mr. P. Talaulikar,Advocate for the applicant/intervenor.

Mr. S. D. Lotlikar,Senior Advocate with Mr. Ryan Menezes, Advocate for the respondents/ original petitioners.

Mr. S.S.Kantak, Advocate General with Mrs. L. Dharwadkar, Addl. Govt

Advocate for the original respondent nos. 1 & 2.

Mr.V. P. Thali, Advocate for the original respondent no.3.

WITH

WRIT PETITION NO.426/2006

1. Shri Bhikaji Babuso Naik Satardekar,
   68 years, businessman, residing
   at Harvalem,Sanquelim, Goa.

2. Shri Vithal Raghunath Kamat,
   45years, Agriculturist,
   residing at Virdi, Sanquelim, Goa

3. Shri Damodar Krishna Ghadi,
   35 years, in service,
   residing at Virdi, Sanquelim, Goa.

4. Shri Ramchandra Pundalik Navelkar,
   51years, in service, residing at
   Prata Nagar, Harvalem,
   Sanquelim, Goa

5. Shri Praveen Dwarkanath Blaggan,
   45years, Businessman,
   residing at Gokulwadi, Sanquelim,
   Goa. .. **Petitioners.**

Versus

1. The State of Goa,
   through the Panchayat Secretary,
   with his office at Secretariat
   Complex, Porvorim,
   Bardez-Goa.

2. Sanquelim Municipal Council,
Through its administrator,
With his office at Sanquelim
Municipal Council, Sanquelim,
Goa. .. **Respondents.**

Mr. V. P. Thali, Advocate for the petitioners.

Mr. S. S. Kantak, Advocate General with Mrs. L. Dharwadkar, Addl. Govt Advocate for the respondent no.1.

WITH

MISCE. CIVIL APPLICATION NO.858/2007
IN
W.P. NO. 426/2006.

Bhikaji Babuso Naik Satardekar,
Harvalem, Sanquelim, Goa. .. **Petitioner.**

Versus

The State of Goa through
the Panchayat Secretary& Anr. .. **Respondents.**

State of Goa through
Director of Municipal Administrator .. Applicant.

Mr.S.S.Kantak, Advocate General with Mrs. L. Dharwadkar, Addl. Govt Advocate for the applicant.

Mr. V. P. Thali, Advocate for the respondents/original petitioners

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WITH

WRIT PETITION NO. 554/2007.

Shri Manohar C.Adaipaikar,
R/o. Khadapaband, Ponda Goa .. **Petitioner.**

Versus

1. State of Goa,
Through its Chief Secretary,
having office at Secretariat,
Porvorim Goa.

2. Director of Municipal Administration,
having office at Collectorate building,
Panaji Goa.

3. State Election Commissioner,
through its Secretary having office
at Panaji Goa.

4. Administrator, Ponda Municipal
Council,having office at Ponda
Goa.

5. Ponda Municipal Council,
through its Chief Officer, having
office at Ponda Goa. .. **Respondents.**

Mr. N. K. Sawaikar, Advocate for the petitioner.

Mr. S.S.Kantak, Advocate General with Mrs. L. Dharwadkar, Addl. Govt Advocate for the respondent nos. 1 & 2.

Mr.V. P. Thali, Advocate for the respondent no.3.

Mr. S. D. Padiyar, Advocate for the respondent no.5.

Coram :- **D. B. BHOSALE & N. A. BRITTO, JJ.**

Date : - **18th December, 2007.**

ORAL JUDGMENT: (PER D. B. BHOSALE, J.)

1. Rule in Writ Petition Nos.538 of 2007 and 554 of 2007. By consent, Rule made returnable forthwith. Learned Counsel waive notice on behalf of the respondents. By consent, both these petitions along with Writ Petition No.426 of 2006 with Misc. Civil Application No.858 of 2007 therein are taken up for final hearing forthwith and heard finally. .

2. All the three writ petitions and Misc.Civil Application 858 of 2007 in Writ Petition No.426 of 2006 raise common questions and hence they are being disposed of by common judgment.

3. The petitioners in Writ Petition No.538 of 2007 have filed this petition under Articles 226 and 227 of the Constitution of India praying for a writ of Mandamus or any other appropriate writ or direction to the respondents to reserve seats for the Other Back Ward Communities (for short, "OBCs") in all the Municipal Councils in the State of Goa including the Municipalities of Ponda and Sanquelim before conducting municipal elections for them. The petitioners claim that they belong to Nabhik and Bhandari Naik communities which are included by the State of Goa in its list of OBCs.

4. Writ Petition No.554 of 2007 is filed by Manohar Adaipaikar, who was elected councilor of the Ponda Municipal Council, (for short, "PMC") in the last elections of the council held on 21.8.2001. He also belongs to OBC category. In this petition, he is seeking direction to the respondents to hold elections to PMC within the specified time schedule and has opposed postponement of the elections on any ground whatsoever.. He has also sought declaration that the order dated 5.9.2006 issued by respondent no.1 appointing N.V.Narvekar as an Administrator of PMC is illegal and ultra vires the provisions of the Constitution of India. However, in the course of arguments, this prayer was not pressed by the learned counsel for the petitioners.

5. In Misc.Civil Application No.858 of 2007 in Writ Petition No.426 of 2006 the State has prayed for extension of time to hold elections to Sanquelim Municipal Council (for short, "SMC") and PMC for a period of six months. It appears, in Writ Petition No.426 of 2006, filed by the five petitioners, the main challenge is to the Ordinance no.2 of 2006, by which the existing village panchayats of Sanquelim-Harvale-Virdi has been converted into municipal area with effect from 28.4.2006. The petitioners have made several other prayers in that writ petition including the interim prayer seeking stay of the operation of the impugned order dated 28.4.2006 appointing the Administrator for the municipality of Sanquelim and direction

to hold elections within a reasonable time to be fixed by this court This court, on 16.4.2007 admitted the writ petition and on 9.7.2007 recorded a statement made by learned Advocate General to the effect that the process to hold elections to SMC will be completed by December 2007 in consultation with the State Election Commissioner. While accepting the statement made by the Advocate General, this court observed that the process of elections would be completed expeditiously.

6. In Misc. Civil Application No.858 of 2007 in Writ Petition No.426 of 2006, the Director of Municipal Administrator has, however, expressed difficulties faced by them in holding the elections by December 2007. It is stated in the application that apart from SMC, the elections were also required to be held for PMC as its term had expired and the Administrator had been appointed. It is further stated that steps were initiated to delimit 13 wards for PMC and 11 wards for SMC and that exercise was completed and the notification of delimitation of wards with reservation of seats for women was issued on 20.6.2007. A reference to the amendment of the Goa Municipalities Act,1968 (for short, "the Municipalities Act") is also made, which provides that in every municipal council seats shall be reserved for SC, ST and OBC. It is further stated that the Government has sanctioned an amount of Rs.27 lacs, to the Goa State Commission for Backward Classes for conducting survey, as

demanded by the said Commission. The application further states that the Commission has informed that the strategy for the survey of SC., ST and OBC has been finalized and the training has also been imparted to CDPOs and the formats have been settled by a multi sectoral committee. This process, according to the applicants, is likely to take some more time though the exercise is now initiated. It is against this backdrop, they have prayed for extension of time granted by this court vide order dated 9.7.2007 to hold elections to SMC and PMC for a period of six months.

7. Misc.Civil Application No.862 of 2007 is filed by the petitioners in Writ Petition No.538 of 2007 seeking urgent hearing of the writ petition on interim relief and hearing of Misc Civil Application Nos 858 of 2007 in 426 of 2006 filed by the Director of Municipal Administration for extension of time urgently .

8. Misc. Civil Application nos 870 of 2007 and 874 of 2007 are filed by the two intervenors intending to oppose the prayers made in writ petition no.538 of 2007. We have allowed those applications and heard learned counsel for the intervenors on merits.

9. Before we make reference to the submission advanced by learned counsel for the parties and deal with the questions raised in these

petitions/applications, it would be advantageous to state undisputed facts which may be relevant for deciding the questions raised. Though in writ petition no.538 of 2007 the petitioners have made general prayer seeking direction to the respondents to reserve seats for OBCs in all the municipal councils in the State of Goa,for the present we are concerned with the two municipal councils, namely, the PMC and SMC. The relevant facts are as under:-

A-(i) There are 13 municipal councils in the State of Goa and the one Municipal Corporation of the City of Panaji.

(ii) The term of PMC expired on 6.9.2006 and in terms of the mandate of Article 243-U of the Constitution of India the elections were due on or before the date of expiry.

(iii) The State Election Commissioner had proposed to hold elections on 3.9.2006. As per the proposed election programme, nomination papers were to be accepted between 7.8.2006 and 14.8.2006.

(iv) The number of wards of PMC was increased from 11 to 13 in view of the Goa Municipalities (Amendment) Act, 2006 assented by the Governor on 4.8.2006. The Election Commissioner, in view of the increase in the number of wards and in view of the election process of bye election to fill up Mormugaon Lok-Sabha seat, which was to commence from 5.10.2007 and to

continue upto 5.11.2007, postponed the elections of PMC..

(v) SMC came into being pursuant to an ordinance issued by the State Government on 28.4.2006. Prior to this, it was a Panchayat area. The term of the Panchayat had expired on 5.4.2006.

(vi) The Goa Municipalities Act, 2006 (Goa Act 14 of 2006) was subsequently enacted by the Legislature thereby repealing the Goa Municipalities (Amendment) Ordinance, 2006. The section of the ordinance is declared to be deemed to have come into force on 28.4.2006.

(vii) Immediately upon constitution of SMC, an Administrator was appointed vide order dated 28.4.2006 issued under section 298(1)(d) of the Municipalities Act,1968.

(viii) In Writ Petition No.426 of 2006, 28.4.2006 , this Court, as aforestated, recorded the statement of the Advocate General stating that the elections process to SMC will be completed by December, 2007

(ix) SMC have 11 wards.

(x) The elections of the village Panchayat of Sanquelim-Harvale-Virdi were due on 30.4.2006. In view of the ordinance dated 28.4.2007 the elections were postponed.

B-(i) The State of Goa, by the two Notifications dated 3.3.1997 and 30.6.2000, notified inclusion of certain communities in the State List of OBCs

(ii) The State of Goa amended section 9 of the Goa Municipalities

Act,1968 and under clause (2) of sub-section (1) of Section 9 provided for reservation for OBCs along with Scheduled Castes and scheduled Tribes, in every municipal council. The amendment came into force on 25.4.2007.

(iii) In PMC areas, there are about 15,032 voters out of which about 41% belong to OBCs and in SMC area, out of total 9254 voters, about 33% belong to OBCs.

(iv) For the first time vide Notification dated 22.4.2003, three communities, namely Gawda, kunbi and Velip were notified as Scheduled Tribes in the State of Goa. Prior to this notification all the three communities were recognised as OBCs.

(v) The Director of Social Welfare, the Government of Goa has published a Survey Report on Scheduled Tribes of Goa (Gawda, kunbi, Velip) in February 2004 which shows in PMC area there are about 50 Tribe Households, while in SMC there are nil. This is published by the Government for official use.

(vi) The State Election Commission had notified in accordance with Rule 4 of Goa Municipalities (Election) Rules, 1969, election programme of PMC and SMC which was to commence from 19.11.2007, with the date of poll fixed on 16.12.2007. The said elections were slatted to be held, without providing reservations for OBCs. The said election programme has been aborted, in view of the interim order passed by this Court on 16.11.07 in Misc

(vii) The figures of the last preceding census, namely the one held in 2001 are available and those census figures do not show any population of OBCs in the State of Goa.

(viii) If the time as prayed is not extended and the elections are directed to be held forthwith, they will be held without there being any reservation for OBCs.

10. Against the backdrop of the aforesaid factual matrix, the arguments were advanced by learned counsel for the parties in all these petitions/applications, which were based on Article 243T and 243U of the Constitution and in view thereof it would be advantageous to reproduce these Articles for better appreciation of their submissions.

> **"243T. Reservation of seats –** (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.
>
> (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
>
> (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the

Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

243U – Duration of Municipalities, etc.- (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer :

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed. -

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved

> Municipality would leave continued under clause (1) had it not been so dissolved."

11. A reference is also required to be made to Article 243-ZG, which bars interference by courts in electoral matters except by way of election petition presented to such authority and in such manner as is provided for by or under any law made by legislature of a State.

> **"243ZG. Bar to interference by courts in electoral matters. -** Notwithstanding anything in this Constitution,-
>
> (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZF shall not be called in question in any court;
>
> (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

12. We have heard learned counsel for the parties at great length. From both sides lengthy arguments were advanced. With the assistance of learned counsel for the parties we went through the entire material on record and the provisions of the Constitution and different Statutes so also the judgments of the Supreme Court and of this Court cited in the course of arguments.At the outset, we would like to deal with the prayers made in Writ Petition No.538 of 2007 and in Misc Civil Application No.858 of 2007 in Writ Petition No.426 of 2006.

13. Mr Lotlikar, learned senior counsel for the petitioners in Writ Petition No.538 of 2007, after inviting our attention to Article 243-T, submitted that the Constitution of India has been specifically amended to introduce a special Chapter pertaining to institutions of Local Self Government, namely the panchayats and the Municipalities. He submitted that sub-Article (6) of Article 243-T is worded in the same fashion as in the provision of Article 15 (4) and Article 16(4), which provide for reservations in favour of SC, ST and OBCs. So far as reservation of seats in favour of OBCs is concerned, Article 243T(6) of the Constitution provides that Legislature of a State shall be at liberty to provide for such reservation in favour of OBCs. In other words, he submitted that Article 243-T(6), in fact, grants constitutional protection to the laws which State Legislature may choose to enact to provide for reservation for OBCs. The law made by the State of Goa in view of this constitutional provision, has protection of the constitution and, therefore, has the flavour of constitutional mandate. He submitted, the State Legislature has enacted a law in view of this protection granted under this provision and, therefore, there is a statutory obligation, backed by constitutional provision in favour of OBCs. The State is, therefore, obliged to discharge this obligation and provide for reservations in favour of OBCs. He then submitted, whether reservation is to be provided on the basis of 2001 census or otherwise, is totally non issue. He submitted that by virtue of the amendment to provision of section 9 of the

Municipalities Act, reservation of seats for OBCs is liable to be made in proportion to the population within the concerned municipal area. In short, he submitted that in view of the provisions of Article 243-T(6) and section 9 of the Municipalities Act, it is clear that it is a constitutional mandate to have members belonging to SC, ST and OBC in the municipal councils belonging to these particular Caste, Tribe and Classes.

After inviting our attention to Article 243U of the Constitution, Mr Lotlikar submitted that the time limit for holding elections of PMC and SMC as contemplated under this Article has already elapsed. The question , therefore, according to Mr Lotlikar, has to be addressed to in the present petition, is whether elections to the two municipalities should be held in view of the mandate under Article 243U or Article 243T read with section 9 of the Municipalities Act or whether the balance should be struck between the two provisions, in the interest of making the municipal council a true representative of the populace, within its jurisdiction. He, therefore, submitted that in order to ensure a proper compliance with the constitutional mandate, some time must be given to the Government to complete necessary exercise which would ensure as far as possible that the reservations are provided on a scientific and accurate basis. He submitted that these provisions are made with a view for upliftment of backward classes in view of historical reasons which

cannot be overlooked while dealing with the matters such as one in the hand.

Insofar as **Kishansing Tomar Vs Municipal corporation of the City of Ahmedabad and Ors., (2006) 8 Supreme Court Cases 352** is concerned, Mr Lotlikar submitted that the said decision does not lay down that one mandatory provision of the constitution shall be given a go by for the purpose of adhering to another constitutional provisions. The Supreme Court in the said case was not concerned of the conflict between the two provisions of the Constitution. It was simply examining the issue of holding municipal election within the time prescribed under article 243U of the constitution. The facts of the said case, therefore, in the context of which the Supreme Court was examining the provisions of Article 243U was totally different.

Mr Lotlikar, further submitted that the State Election Commission cannot insist upon holding elections in compliance with the one constitution provision which would be violative of another constitutional provision or even a law made by the State Legislature. The State Election Commission has miserably failed in its duties in this regard for ensuring that the Government took proper steps to make reservations in respect of SC, ST and OBCs before the elections were due.

Lastly, he submitted that though 2001 census is in place, it would be

impossible to make reservations on the aforementioned census, firstly because classification of three important categories, namely Gawda, Kunbi and Velip as Scheduled Tribes, has taken place for the first time in 2003 after the completion of 2001 census. He, therefore, submitted that if the elections are held on the basis of 2001 census these three categories so also OBCs would not get representation in the newly elected municipal councils. He submitted that in order to comply with the mandate laid down in the decision of the Apex Court in the case of **Indra Sawney Vs. Union of India, AIR 1993 SC 477**, the members of OBCs belonging to creamy layer, will have to be excluded for the purpose of reservations. For that purpose, sufficient time would have to be given to the Government to complete this exercise.

14. Learned Advocate General appearing for respondent nos 1 and 2 in Writ Petition No.538 of 2007 and the applicants in Misc. Civil Application No.850 of 2007 made submissions in support of the contentions urged by Mr Lotlikar, learned Senior Counsel. In addition to what Mr Lotlikar urged, learned Advocate General, submitted that in the absence of proper data of the population figures of SC, ST and OBC within the municipal areas, no proper reservation could be made and as a result thereof, these categories would not get proper representation in the newly elected councils. He submitted that the information was requested from Goa State Commission for backward classes

of total population of SC, ST and OBC in all the municipal councils in Goa including PMC and SMC, however, they also could not furnish the figures of their population. The data which is available and collected by the said Commission for Backward Classes, is not accurate but is by approximation and no special criteria was adopted. He then submitted that the figures of the population of ST and OBC in PMC and SMC area are not available since both these communities were not recognised/included in the State of Goa in 2001. Whatever data is available it is not accurate and hence the statement was made and was recorded while disposing of the writ petition no.269 of 2007 vide order dated 2.7.2007, seeking some more time to conduct re-survey within six months. He submitted that the process has yet not been completed and it would take quite some time and, therefore, he prayed that six months extension may be granted or atleast 2-3 months time may be granted to enable the State to make all effort to collect the data for the purposes of reserving seats for OBCs in PMC and SMC municipal elections. He submitted that the data pertaining to OBCs is not available at all. He submitted, the said Commission for Backward Classes has agreed to undertake the responsibility to collect a data in different Wards of the municipal councils of PMC and SMC, however, they would require sufficient time to complete the said process. Though the State has figures of population percentage of all the three categories available in the concerned Talukas, there

are no separate figures of the municipal areas available. The learned Advocate General stoutly denied the allegation of collusion with the petitioners in writ petition no.538 of 2007 and justified every act of the State Government which was directly or indirectly responsible for the postponement of the elections. It is against this backdrop, learned Advocate General submitted that if the Government is given extension, as prayed, it would be able to compete the process of collecting data and hold elections within the extended time.

15. Mr. Dessai, learned senior counsel for the Intervenor in Misc. Civil Application No.874 of 2007, after inviting our attention to Article 243U(3) of the Constitution, submitted that this provision mandates that an election to constitute a municipality must be completed before the expiry of its duration, that is five years from the date appointed for its first meeting and no longer. He submitted that though the term of both the councils expired long back, the State Election Commission decided to postpone elections on invalid reasons or grounds and the mandate of Article 243U has been violated with impunity. He then submitted that though Article 243T mandates reservation of seats for Scheduled Castes and Scheduled Tribes in every municipality and sub-Article (6) thereof permits a State Legislature to make provision for reservation of seats in any municipality in favour of backward class of

citizens, this reservation is not mandatory. Provision of Article 243T(6) is only an enabling provision or it, at the most, gives permission to a State Legislature to reserve or not to reserve seats in favour of backward class of citizens and, therefore, in any case section 9 of the Municipalities Act cannot be said to have flavour of constitutional mandate. He took us through the judgment of the Supreme Court in **Kishansingh Tomar** case (supra) and submitted that the mandate of the judgment of the Constitution bench has been violated and therefore the elections have to be ordered at the earliest to restore constitutional mandate without allowing the State Government to hold survey or to hold inquiry to ascertain the facts as alleged. He submitted that elections will have to be held on the basis of facts already ascertained at the last preceding census of which the relevant figures have been published. The proposed inquiry cannot be the basis for holding elections or delaying elections, since elections will have to be held on the basis of relevant figures already ascertained.

16. Mr Sonak, learned counsel for the intervenors in Misc. Civil Application No.870 of 2007, in addition to the submissions made by Mr Dessai, learned senior Counsel, submitted that the State Election Commission ought to have proceeded to hold elections as per the constitutional mandate of Article 243U. He submitted that the petitioners in writ petition no.538 of

2007, in collusion with the State Government, are bent upon further postponing the elections of PMC, on the ground that the Goa Municipalities (Amendment) Act, 2007, which came into force on 20.4.2007 and which provides for reservations to the Other Backward Classes needs to be implemented in the matter of elections to PMC and SMC. He further submitted that the term of both the councils got over much before this amendment came into force and therefore under any circumstances OBCs cannot be given benefit of this amendment. He also placed heavy reliance upon the judgment of the Supreme court in **Kishansing Tomar case** (supra) in support of his submissions so also the judgment of the Supreme Court in **Gujarat Assembly Election Matter, in Re. in 2002(8) Supreme Court Cases 237** and submitted that under no circumstances could the authorities defer or delay the elections and breach the constitutional mandate Article 243U, except the circumstances such as natural calamities or the Act of God. Next, he submitted, it is impermissible for the State Government or the State Election Commission to undertake any survey at this stage and rely upon the results of such survey for the purposes of either holding of the elections or giving effect to the Policy of Reservation. He invited our attention to Article 243P(g) of the Constitution which defines "population" and submitted that the definition of population as contained in section 2(36) of the Goa Municipalities Act is pari materia. He, therefore, submitted that the reference

shall have to be made to the population figures as ascertained in the last preceding census of which the relevant figures have been published, that is census of 2001. He submitted that any attempt of conducting a survey at this stage and placing reliance upon population figures ascertained during the course of such survey would be ultra vires the Constitution of India as well as the Goa Municipalities Act, 1968. He then invited our attention to Article 243ZG and submitted that the Courts are not allowed to interfere in electoral matters except by way of election petition. In support of this contention, he placed reliance upon the judgments of the Apex Court in **Anugrah Narain Singh and Anr Vs. State of UP and Ors, 1996(6)SCC 303**. He then submitted that this Court has no power to pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent. In support of this contention, he placed reliance upon the judgment of the Supreme Court in **Lakshmi Charan Sen and ors Vs. A.KM.Hassan Uuzzaman and ors, 1985 (4) SCC 689**. Lastly, he submitted that the petitioners in Writ Petition no.538 of 2007 are guilty of inordinate delay and laches.

17. We have heard learned counsel for the petitioners in writ petition no.554 of 2007. He adopted the submissions advanced by the learned counsel for the Intervenors and prayed for dismissal of writ petition no.538 of 2007

and submitted that the prayers made in his petition be allowed. Since the submissions advanced by him are similar to the submissions advanced on behalf of the intervenors, I do not deem it necessary to make reference to his submissions to avoid repetition.

18. Before we advert to the contentions urged by learned counsel for the parties, we would like to look into the judgment of the Supreme Court in **Kishansing Tomar's case** (supra), which learned counsel for both the sides, relied upon heavily in support of their contentions. The Supreme Court in that case was dealing with an appeal arising from the judgments of the High Court passed by the learned Single Judge in the writ petition and of the Division Bench in the LPA. The appellant, who was the writ petitioner before the High Court, apprehended that the authorities may delay the process of election to constitute the new municipal body and, therefore, filed the said writ petition. The State Election Commission, in their reply affidavit, submitted that the State Government had issued notification on 8.6.2005 determining the wards for the City of Ahmadabad by which total number of wards had been increased from 43 to 45 and in view thereof, the increase in the number of wards the Commission was required to proceed with the exercise of delimitation of the wards of the city of Ahmadabad and that the Commission had issued circular requiring the collectors and the designated officers to

furnish details and to make proposal for delimitation of the wards. It was also stated by the commission in their reply that it was required to consult the political parties to carry out delimitation of the wards and it would take atleast six months time for completing the process of elections and the Commission could act only after the State Government issued notification. Similar arguments, as advanced by the learned Advocate General in the present writ petition justifying first attempt to postpone the elections of PMC in September, 2006, were advanced before the learned Single Judge in that case, who accepted the time frame suggested by the State Election Commission and directed to complete the process of election by 31.12.2005. The order of the learned Single Judge was carried in LPA . The Division Bench of the High Court refused to interfere with the said order. It is against these orders, an appeal was preferred before the Supreme Court. The Election Commission before the Supreme Court contended that every effort was made by the Election Commission to conduct elections before the stipulated time, but due to unavoidable circumstances, elections could not be held and the preparation of electoral roll and the increase in the number of wards had caused delay in elections and under such circumstances delay was justified in conducting the elections. It is against this backdrop, the Supreme Court after considering the provisions of Article 243U, 243ZA and 243S and 243T, so also the statement of object and reasons in the constitution amendment bill relating to urban local

bodies, in paragraph 13 held thus :

> "13 - The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this article, the duration of the municipality is fixed for a term of five years and it is stated that every municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a municipality shall be completed – (a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. Therefore, the constitutional mandate is that election to a municipality shall be completed before the expiry of the five years' period stipulated in clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner."
>
> (emphasis supplied)

Thus, it is clear that it is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections to the municipality are conducted before the expiry of its duration of five years as specified in clause (1) of Article 243U. The Supreme Court then considered some of its judgments and in paragraphs 19 and 22 observed thus :

> "19. From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In

> other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.
>
> 22. In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State Governments to recognize the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for Parliament and the State Legislatures. In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and Part IX-A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India."
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> (emphasis supplied)

19. In **Gujarat Assembly Election Matter In Re**(supra), the Constitution Bench observed that "free, fair and periodic elections are part of the basic structure of the Constitution of India. In a democracy the little man – voter- has overwhelming importance and cannot be hijacked from the course of free elections"**.** The Supreme Court in that case in paragraphs 147 and 148 observed thus:

> "The consequential fallout of not holding election for a long time is the functioning of a caretaker Government which is contrary to the principles of responsible government. The caretaker Government is not the

> solution to deferring elections for unduly long periods."
>
> "Deferring an election is an exception to the requirement that elections should be held as early as practicable. The requirement of summoning the House has inbuilt in it the existence of a House capable of being summoned. Therefore, even in the case of premature dissolution, effect of the Election Commission should be to hold elections in time so that a responsible Government is in office. At the cost of repetition it may be indicated that where free and fair election is not possible to be held, there may be inevitably delay. But reasons for deferring elections should be relatable to acts of God and normally not acts of man. Myriad reasons may be there for not holding elections."

The Supreme Court then proceeded to observe that "where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervising impossibility caused by the act of God. Situations may be created by interested persons to see that elections do not take place and the caretaker Government continues in office. This certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded." The Supreme Court has also stated that man-made situation intended to defer holding of elections should be sternly dealt with and should not normally be a ground for deferring elections beyond six months period, the starting point of which would be the date of dissolution. Any man-made attempt to obstruct free and fair election is antithesis to democratic norms and should be

overcome by garnering resources from the intended sources and by holding the elections within the six months' period.

20. This Court had an occasion to deal with almost similar situation in respect of holding of Panchayats elections in **Joseph Siqueira and ors Vs. The State of Goa and ors, 2007 (1) Goa L.R.401**. The Division Bench of this Court resisted the attempt on the part of the State of Goa and the State Election Commission to postpone the holding of Panchayats elections by relying upon the judgment of the Supreme court in the case of **Kishansing Tomar case** (supra). In the said case, reasons similar to ones cited in the present case were urged on behalf of the State Government and the State Election Commission. Thus, it is clear that under no other circumstances, could the authorities defer or delay the elections and breach the constitutional mandate of Article 243U of the Constitution, except the circumstance over which the persons in the helm of affairs have no control like acts of God.

21. Upon consideration of the judgments relied upon and as noted herein above in particular, the position of law which emerges is as follows: Article 243U(3) of the Constitution mandates that an election to constitute a Municipality must be completed before the expiry of its duration of five years from the date appointed for its first meeting and the new body shall be

constituted before expiration of the term of outgoing Council and in any case within six months from such date of expiration of the term of outgoing Council. The State Election Commission is not expected to put forward any case based on unreasonable ground that elections could not be completed in time. Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time election has to be conducted on the basis of the then existing electoral rolls. The Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause 3 of Article 243U and not yield to a situation that may be created by vested interests to postpone the elections from being held within the stipulated time. The entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of a new Municipality every five years, and in order to avoid the mischief of delaying process of election and allowing the nominated bodies/administrator to continue, the provisions have been suitably added to the Constitution. A distinction is made between a man-made situation and the act of God. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervising impossibility caused by the act of God. However, if the situation is “created” not by the act of God and if elections do not take place that certainly would be against the scheme of the Constitution. Any man-made

situation, created deliberately or otherwise, obstructs a free and fair election cannot be tolerated and need to be dealt with sternly and should not normally be a ground for postponing elections beyond six months period, either from dissolution of the Council or expiration of its term or for that matter from the date of constitution of a new Council. It is against this backdrop we would now like to consider the arguments advanced and the questions raised by the learned counsel for the parties.

22. At the outset, we would like to consider the submissions of the learned Advocate General that under Article 243T of the Constitution, seats are required to be reserved for Schedule Castes and Schedule Tribes in every municipality and since the accurate figures of Schedule Tribes population in Ponda and Sanquelim are not available, holding of the elections on the basis of inaccurate data would result in nonfulfillment of the mandate under Article 243T and Section 9 of the Municipalities Act. There is no dispute that the Directorate of Social Welfare, Panaji, Government of Goa, conducted a survey and submitted its report to the Government in February, 2004 on the Scheduled Tribes of Goa (Gawda, Kunbi and Velip). A copy of the report was placed before us. The report shows that the Committee constituted by the Directorate of Social Welfare conducted the survey with the valuable assistance rendered by the officials of the Department of Planning, Statistics

and Evolution, for preparing necessary codes and concepts needed for the conduct of survey at the initial stages. The committee had received guidance, till the completion of the report, of the National informatics Center which developed and provided the required software. The CDPOs, Mukhiya Sewaks and Anganwadi workers had joined in gathering the data from every nook and corner of the State. The staff of Goa State Commission for Backward Classes also provided secretarial assistance through out the survey work. The survey has been a complete enumeration of all persons identified as Gawda, Kunbi and Velip in the State of Goa and, therefore, the report states that this work to be called as "census". An interview schedule having 17 probes was prepared, and information had been gathered in the areas of demography, education, employment, land ownership and other assets and basic amenities.

From perusal of the survey report on the Schedule Tribes of Goa (Gawda, Kunbi and Velip), we are satisfied that the procedure followed by the committee was scientific and accurate. In the affidavit in reply filed on behalf of respondent no.2 dated 23.11.2007, the Government has stated that by letter dated 30th October, 2007, an information was sought from the State Commission for Backward Classes about the progress made in conducting the survey of SC, ST and OBC's and to indicate the tentative period by which a detailed report could be made available for reservation of seats for OBCs in

PMC and SMC areas. The Commission vide their letter dated 2nd November, 2007 has informed that the strategy for the survey has been finalized and the training has also been imparted to CDPOs. They have further stated that formats have been settled by the multi-sectoral committee. Thus, it is clear that from 2nd of July, 2007, the date on which statement of the learned Advocate General was recorded in the order in Writ Petition No.269 of 2007, the only progress made by the Government was that they exchanged the correspondence with the commission, and in turn, the commission has only chocked out strategy, apart from sanctioning rupees .twenty seven lacs for this exercise. Now once again the Government is seeking further extension of six months for conducting a fresh survey which, in our opinion, is not necessary atleast for the elections of PMC and SMC.

We do not find anything wrong with the procedure that was adopted by the committee for conducting survey for which secretarial assistance of the Commission for Backward Classes was sought. The Commission also, as stated in the affidavit, intend to follow the similar procedure, as was followed by the committee, for conducting survey of SC, ST and OBCs. In fact, we find that the procedure adopted and followed by the committee was more systematic and scientific.

That apart, the purpose of conducting a fresh survey, to be undertaken in pursuance of the assurance given in Writ Petition No.269 of 2007, cannot be overlooked. In that writ petition, the Advocate General had made a statement that the Government desired to conduct a detailed survey of OBCs to undertake revision of the lists under section 11 of the Goa State Commissioner for Backward Classes Act, 1993 along with survey of SC, ST communities in order to assess the demographic profile and economic status, so as to formulate and implement viable scheme for their development. From bare perusal of the order in Writ Petition No.269 of 2007, it is clear that the survey, which government desires to conduct, is not for the purpose of elections of the councils. In fact the only prayer in that writ petition was that the survey of certain tribal population in Goa had not been properly conducted. We do not wish to make any observation or comment on the survey which Government desire to undertake for the purposes of demographic profile and economic status so as to formulate and implement viable scheme for the development of SC, ST and OBCs. It is open for the Government to conduct such survey but for that purpose elections of PMC and SMC need not be withheld or postponed any further.

23. It is against this backdrop, we are of the considered view that merely because the Advocate General made a statement and recorded by the court in

Writ Petition No.269 of 2007, stating that by circular dated 15.2.2007 it has been decided by the Government to conduct a detailed survey of OBC community along with survey of SC, ST, in any case, does not mean that the figures of Schedule Tribes (Gawda, Kunbi and Velip) population in Ponda and Sanquelim are inaccurate, insofar as the elections of PMC and SMC are concerned, and/or to have effect on the reservation for the Schedule Tribes in the elections of these two councils. The villagewise figures mentioned in Table 20 of the report of the Schedule Tribe households in Taluka Ponda show that insofar as Ponda Municipal Council area is concerned, there are hardly 50 Schedule Tribe households while in Sanquelim Municipal Area they are Nil. Thus, the survey report prepared by the Directorate of Social Welfare for official use show that the Schedule Tribes may not be even entitled for any reservation in these councils taking into consideration their population against the total population in PMC and SMC, which is about 15032 and 9254 respectively. However, we do not wish to express any opinion in that regard. In the circumstances the submission of learned Advocate General that conducting of elections without "re-survey" would result in non-fulfillment of the mandate under Article 243T and section 9 of the Municipalities act must be rejected.

24. Article 243T mandates reservation of seats for Schedule Castes and

Schedule Tribes in every Municipality and Sub-Article (6) thereof permits the State Legislature to make provision for reservation of seats in any municipality in favour of the Backward Class of citizens. Mere perusal of this provision would show that it is merely a clarificatory or at the highest an enabling provision. It clarifies that nothing in Part IX, shall prevent the State Legislature of a State from making or enable to make any provision for reservation in favour of backward class of citizens. In other words, it empowers the State Legislature to reserve or not to reserve seats in favour of backward class of citizens. Thus, it is optional for the State Legislature and not mandatory to make a law in terms of Article 243T(6). Under no circumstances, therefore, the reservation of seats in favour of OBCs pursuant to the provisions of section 9 of the Municipalities Act can be characterized as "constitutional mandate".

25. Section 9 of the Municipalities Act was amended and it received Governor's assents on 4.8.2006 and it was brought into force on 25.4.2007. This provision, undoubtedly, provides that in every council, in the State of Goa, seats shall also be reserved for Scheduled Caste, Scheduled Tribe and Other Backward Class as provided in sub-section (2). The term of PMC had expired on 6.9.2006 while elections to SMC were due on 30.4.2006 after the Goa Municipalities (Amendment) Ordinance, 2006 was promulgated. It is

clear that if the Election Commission had conducted elections of PMC and SMC at the stage when they were due, OBCs could not have claimed any reservation in both these municipal councils. Merely because the amendment is brought into force does not mean that elections of these two councils should be deferred till the entire data of OBCs is collected by the State Government. This Court, in fact, gave such opportunity once by allowing the State Government to complete the process within six months time and to hold elections by December, 2007. But the pace with which the Government moved during last 5-6 months, we have our own doubt whether they would be able to complete the survey and conduct elections within the extended period and that no other hurdle, legal or otherwise, would further obstruct holding of elections, as it happened twice. In our opinion, OBCs cannot take advantage of the situation and keep the machinery, responsible for conducting the elections, on hold and contend that unless seats are reserved for OBCs in both these municipal councils, their elections cannot be conducted. Delay in holding elections timely, prima facie, appears to be a situation created and not due to the acts of God. Had the State and the Election Commission taken prompt steps to hold elections either when they were due or atleast within six months therefrom this situation would not have arisen. Any man-made situation created, intentionally or otherwise, to defer holding of elections cannot be tolerated and, in any case, it cannot normally be a ground for

deferring the elections further.

26. We would now like to consider the question raised by the petitioner as to whether the elections of PMC and SMC should be held in view of the mandate of Article 243U or of Article 243T read with section 9 of the Municipalities Act or balance should be struck between the two provisions, to make municipal councils a true representative of the populace within its jurisdiction. In other words, whether one mandatory provision may be given go-by for the purpose of adhering to another constitutional provision, if it is likely to violate the first constitutional provision or law made by the State Legislature. In our opinion, there would not be a conflict between these two provisions of the constitution, if the elections to constitute PMC and SMC are directed to be conducted forthwith. Article 243T mandates reservation of seats only for SC and ST in every municipality. Sub-Article (6) thereof, undoubtedly, permits the State Legislature to make provision for reserving the seats for every municipality in favour of the Backward Class of citizens. The Goa Government, accordingly, by amendment of section 9 of the Municipalities Act has made reservation for OBCs, which, as observed earlier, cannot be treated as constitutional mandate. Insofar as STs are concerned, the data of their population is available in the report published in February, 2004, and in our opinion, the data in the said report in respect of Schedule Tribes in

PMC and SMC areas could be used to safeguard their interest as contemplated under Article 243T for the purposes of the elections of these Councils. If the elections are held on the basis of the data in that report, in our opinion, there will not be violation of the mandate under Article 243T of the Constitution. In other words, if the elections to constitute PMC and SMC are conducted without awaiting the survey report in respect of OBCs population, the mandate of none of these two provisions of the Constitution would be violated. It would be open for the Government to collect necessary data of the OBCs for the elections of other municipal councils in future and for that purpose they may adopt whatever strategy they desire for conducting the survey, but in any case the elections of PMC and SMC cannot be delayed any further.

27. All the laws are invariably made by the Legislature based on the authority conferred on them by the Constitution of India, that by itself does not give such laws any constitutional flavour. In any case the provisions of those laws cannot be elevated to the status of constitutional mandate. The provisions of Goa Municipalities (Amendment) Act, 2007, to the extent they provide for reservations to the other backward classes neither cast any constitutional mandate nor do they have any constitutional flavour. Any attempt to defer or delay the elections under the guise of seeking implementation of the Goa Municipalities (Amendment) Act of 2007 would,

in our opinion, be subversive of not only the constitutional mandate of Article 243U but also the basic structure of the Constitution of India.

28. The provisions of Article 243U with regard to holding of timely elections clearly constitute a constitutional mandate. Clause (1) of Article 243U specifies the duration of municipality for five years from the date appointed for its first meeting and no longer. In the present case, the specified period has expired in case of PMC on 6.9.2006. The elections were proposed pursuant to the mandate under Article 243U. The State Election Commission, however, decided to postpone the elections on the grounds mentioned in their letter dated 15.10.2007. The letter states that in view of the increase in the number of wards, the process of delimitation of wards, reservation of seats, preparation of ward wise voters lists, had to be done afresh and, therefore, the elections, which were fixed in 3.9.2006, had to be postponed. The election process of the bye-election to fill up Mormugao Lok Sabha seat was also mentioned as a ground for postponing the elections since the election machinery, required to conduct the elections to PMC, was then busy with the bye-election to the said Parliamentary Constituency. There was also mention to Diwali festival which was to begin on 8.11.2007. Similar were the grounds for postponing the elections by the State Election Commission in **Kishansingh Tomar's case** (supra). In our opinion, it was incumbent upon the

Election Commission and the other authorities in the present case to carry out the mandate of the Constitution and to see that a new municipality was constituted in time and elections to the municipality were conducted before expiry of its term of five years as specified in clause (1) of Article 243U or atleast within six months therefrom.

29. The Election Commission was required to take steps for holding elections on the basis of the then existing electoral rolls and the other data, as was available then. But in the present case, none of the respondents acted in the manner in which they ought to have in the face of the constitutional mandate. Initially PMC's elections were postponed on the aforementioned grounds and then on the ground that there is an amendment of section 9 of the Municipalities Act which mandates reservation of seats for OBCs. This court, while dealing with Writ Petition No.426 of 2006, at the stage of admission, instead of entering into the questions, as raised now, had once granted them an opportunity to hold elections and complete the entire process within six months, that is, by December, 2007. As observed earlier, the pace with which the Government moved during this six months, we have our own doubt whether the Election Commission would be able to conduct the elections for another six months.

30. Article 243P(g) of the Constitution defines "population means the population as ascertained at the last preceding census of which the relevant figures have been published." To the same effect is the definition of population as contained in section 2(36) of Goa Municipalities Act. There is no dispute that for the purpose of holding of elections or implementation of the reservation policy, reference shall have to be made to the population figures as ascertained in last preceding census of which relevant figures have been published. Therefore, any attempt, as stated by respondent no.2 in their reply affidavit so also in Misc Civil Application No.858 of 2007 in Writ Petition No.426 of 2006 in conducting the survey at this stage and placing reliance upon the figures ascertained during the course of such survey atleast in case of PMC and SMC elections, in our opinion, cannot be and need not be allowed. We do not find any thing wrong in the State Government entrusting the responsibility to the Goa State Election Commission of Backward Classes to collect data of OBCs in all the municipal councils including PMC and SMC areas but that cannot be a ground for postponing their elections any further. The data so collected would certainly help for reserving seats for OBCs in the elections of other councils and corporation.

31. The provisions of Article 243ZG also cannot be overlooked which bar

interference by the Courts in electoral matters. It is true that Article 243ZG does not oust jurisdiction of the High Court under Article 226 of the Constitution of India even then Article 226 ought not to be exercised in electoral matters or when the elections are imminent. As observed by the Supreme Court in **Anugrah Narain Singh** case (supra), the bar imposed by Article 243ZG is two-fold. Validity of laws relating to delimitation and allotment of seats made under Article 243ZG cannot be questioned in any court. Moreover, it is well settled by now that if the election is imminent or well under way, the Court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because some one or the other will always find some excuse to move the court and stall the elections as observed by the Supreme Court in that case. In other words, no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which in its writ jurisdiction is invoked.

32. At this stage, we also deem it appropriate to make a passing reference to the fact situation which may not be irrelevant for our purpose. It is stated by the petitioners that in PMC area there are about 15038 voters out of which 41 per cent belong to OBCs and in SMC area out of total 9254, about 34 per

cent belong to OBC. PMC prior to the amendment had 11 councilors. In the last elections of PMC, though there was no reservation for OBCs, it had seven elected members belonging to OBCs category out of eleven. This only shows that in the outgoing council OBCs had adequate representation.

33. In the circumstances, we are of the considered opinion that under no circumstances, time, as prayed in Misc. Civil Application No.858 of 2007, can be extended or the prayer made in Writ Petition No.538 of 2007 can be allowed. Writ Petition No.538 of 2007 and Misc. Civil Application No.858 of 2007, both, stand dismissed. The State Election Commission is directed to initiate the elections process forthwith and complete the same in the shortest possible time from now and in any case within 45 days from today, on the basis of the existing electoral rolls and the data available with them in respect of Schedule Castes and Schedule Tribes categories. Writ Petition No.538 of 2007 and Misc. Application No.858 of 2007 in Writ Petition No.426 of 2006 accordingly stand disposed of. Consequently, all the civil applications in Writ Petition No.538 of 2007 also stand disposed of. Interim order/s in these proceedings, if any, stand vacated.

34. In view of disposal of Writ Petition No.538 of 2007 and Misc.Civil Application No.858 of 2007 in Writ Petition No.426 of 2006, Writ Petition

No.554 of 2007 also stands disposed of in terms of this judgment. Similarly, learned Advocate appearing on behalf of all the petitioners in Writ Petition No.426 of 2006, submitted that he has instructions not to press the other prayers in the writ petition and it may also be disposed of in view of this judgment. Writ Petition No.426 of 2006 accordingly stands disposed of as not pressed.

D. B. BHOSALE, J.

N. A. BRITTO, J.

RRT